

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 11

VERIZON INFORMATION SERVICES
Employer

And

Case No. 11-RC-6524

COMMUNICATIONS WORKERS OF AMERICA,
DISTRICT 3, AFL-CIO
Petitioner

DECISION AND DIRECTION OF ELECTION

The Employer, Verizon Information Services, is a Delaware corporation that is headquartered in Dallas, Texas, with a facility located in Durham, North Carolina, where it is engaged in the sale and publication of print and electronic yellow page advertising. The Petitioner, Communications Workers of America, District 3, AFL-CIO, filed a petition with the National Labor Relations Board (hereinafter Board) under Section 9(c) of the National Labor Relations Act seeking to represent a unit comprised of telephone sales representatives, premise sales representatives, and a customer account agent at the Employer's Durham facility.¹ A hearing officer of the Board held a hearing and the parties filed briefs with the undersigned.

There is no dispute between the parties over the scope or composition of the proposed unit. As evidenced at the hearing and in the parties' briefs, the sole issue is whether the cessation of the Employer's operations at its Durham facility is imminent, so that it will serve no useful purpose to direct an election. The Employer contends that the petitioned-for unit is a contracting unit as the Employer is in the process of closing its Durham facility and that this process is expected to be completed in two to three months. The Petitioner contends that an election should

¹ At the hearing the parties agreed to include the classification of customer account agent, a classification which was not included in the Petitioner's petition.

be directed as any closure of the Durham facility is too speculative at this time. The Petitioner further asserts that even assuming the closure plans were to be implemented, there would still be two employees working out of the Durham area, and those employees—an account executive and a customer account agent—would constitute an appropriate unit.

I have considered the evidence and the arguments presented by the parties on the issue. As discussed below, I have concluded that the Employer's plans are not sufficiently definite at this time to warrant a dismissal of the petition. Accordingly, I have directed an election in the unit described below. To provide a context for my discussion of this issue, I will first provide an overview of the Employer's operations, then a brief description of the Durham facility operations. I will then present in detail the facts concerning the Employer's closure plans, followed by my analysis and conclusions on this issue.

I. OVERVIEW OF THE EMPLOYER'S OPERATIONS

The Employer resulted from a merger in 2000 between Bell Atlanta and GTE. The Employer has facilities throughout the country, and currently has 28 separate bargaining units at different locations, where employees are represented either by the Petitioner or the International Brotherhood of Electrical Workers. In total, those two unions represent approximately 2800-3000 employees within the Employer's organization.

The Employer is currently headquartered in Dallas, Texas. The Employer and its predecessors have undergone a number of reconfigurations over the years as a result of mergers and reorganizations. Presently, there are different sales regions which are based on geography. All of the sales regions report to Vice President of Sales John MacDonald, who is based in Dallas. One of the sales regions, the Sunbelt Region, includes Texas, New Mexico², Louisiana, Florida, North Carolina, and South Carolina. There are four division offices within the Sunbelt

² The transcript inadvertently listed Mexico instead of New Mexico.

Region: two in Dallas; one in Tampa, Florida; and one in St. Petersburg, Florida. The Durham facility is aligned with the Tampa division.

The Employer publishes electronic and printed yellow pages directories throughout the United States. Those directories are published once a year. In preparing the directories, the Employer contacts small and medium businesses and solicits their advertising to place in the directories. To accomplish this goal, the Employer employs telephone sales representatives and premise sales representatives in its sales regions.

II. THE DURHAM FACILITY

The Durham facility is considered a satellite office, which the Employer uses in order to have a local presence in the market and to save on travel costs. Satellite offices do not have the clerical support that is present in larger division offices.

The three classifications in the petitioned-for unit include telephone sales representatives, premise sales representatives, and customer account agent. There are five telephone sales representatives at the Durham facility, whose job duties involve the handling of small accounts. These employees interact with three categories of customers: 1) existing customers; 2) new installs, which are new businesses that recently have installed telephone lines; and 3) nonadvertisers, which are existing companies that have not advertised in the past. In performing their job duties, telephone sales representatives contact the customer, develop an advertising program, close the sale, and perform all attendant services. Telephone sales representatives are not ordinarily employed in satellite offices, as they work out of division offices. Thus, Durham is unique in this respect. It historically has employed telephone sales representatives because the division with which it was previously aligned, based in Atlanta, Georgia, had difficulty hiring telephone sales representatives.

There are six to seven premise sales representatives at the Durham facility. These employees have essentially the same duties as telephone sales representatives, except that their

accounts are larger, and they visit customers' sites instead of handling those accounts solely over the telephone. Whether an account is assigned to a premise or telephone sales representative is dictated primarily by the size of the account, but sometimes the assignment is based on customer preference.

The Durham facility also has one customer account agent. This employee handles delinquent accounts.

Finally, there is one telephone district sales manager and one premise district sales manager at the Durham facility.

III. THE PLANNED CLOSURE OF THE DURHAM FACILITY

The Employer proffered the testimony of Regional Vice President of Sales Carol Harris to establish its contention that the closure of the Durham facility is imminent. Harris testified concerning an analysis and review process which she initiated in October 2002, shortly after she assumed responsibility for the Durham facility, and which culminated in her decision to recommend that the Durham facility be closed within the two to three months following the hearing. The details of this review process and plan are as follows.

In October 2002, as a result of a reorganization, the Employer transferred Durham and another satellite facility located in Myrtle Beach, South Carolina, from the Atlanta sales division to the Tampa sales division. At that time, Harris assumed responsibility for the Sunbelt Region, which included the Durham facility. Shortly thereafter, Harris learned that managers and employees were speculating on the changes and that this was negatively affecting their work output. In October 2002, Harris held conference calls with the managers from North and South Carolina, and met with the telephone sales representatives in Durham. Harris indicated that she could not make guarantees about the future, and that employees needed to focus on the business at hand.

Also in October 2002, Harris initially started considering whether to recommend the expansion of the Durham facility, a project called the Durham Rescope. In order to evaluate that prospect, Harris gathered extensive research, including such factors as the cost of purchasing customer listings from other phone companies, the number of sales persons needed, the type of revenue that would be generated, and whether the Employer would be able to show a profit after expenses. In December 2002, Harris concluded that expanding the Durham facility was not a viable option as the expanded enterprise would barely show a profit.

Harris also evaluated whether the Durham facility should be closed. She ultimately decided in January 2003 that it would not be cost effective to retain the Durham facility. She reached this conclusion based, in part, on three factors related to a projected significant decline in Durham's annual revenues. These factors included: 1) the nationwide loss of a major business contract with Alltel, to be effective October 2003; 2) the Employer's corporate decision to transfer all telephone sales account work valued at less than \$100 monthly to the Dallas headquarters; and 3) the realization that Durham had been handling certain premise accounts in amounts inconsistent with the nationwide norm. She projected that the loss of revenue based on the first two factors amounted to \$6 million. The record does not establish the amount of any revenue loss associated with the third factor.

Harris relied on several additional factors, related both to revenue and corporate organization, in reaching her conclusion that it was not economically feasible to maintain the Durham facility. The additional revenue factors included the decline in revenue experienced by Durham in the past three years and the comparably higher operating costs at the Durham facility. The corporate organizational factor related to the status of hiring telephone sales representatives in the Tampa division, to which Durham is now attached. That is, the Tampa division has not had the same problems with hiring telephone sales representatives that the Atlanta division previously had experienced. Thus, there is no longer an organizational need for the Durham

office to retain telephone sales representatives rather than have them operate out of a division office, as is the corporate norm.

On the basis of the above, Harris testified that she intended to recommend to Vice-President of Sales McDonald sometime during the week of March 25, 2003, or shortly thereafter, that the Durham facility should be closed, that the remaining telephone sales work of \$100 or more monthly should be transferred to the two Florida divisions, and that the remaining premise work should be transferred to the Myrtle Beach, South Carolina satellite facility. Harris also intends to propose that the customer account position be retained in Durham in order to continue to handle delinquent accounts. Harris further plans to propose that an account executive, a new position, be added in Durham. An account executive is a position usually established in a remote area where the Employer does not have a high concentration business. An account executive normally handles accounts that are larger than those handled by a premise representative. The purpose for creating that position would be to maintain a local presence in Durham. Harris envisions that both employees would work out of their homes in the Durham area. By the date of the hearing, March 25, 2003, Harris had not yet spoken to McDonald about her recommendation. Harris anticipates that her recommendation will ultimately be approved by McDonald or someone else, and that the winding down of the facility in Durham would take between two to three months following the approval of the closure.³

IV. ANALYSIS

Before analyzing the specific facts of this case, I will briefly review the legal principles. As shown above, the Employer contends that there should be no election because the proposed unit is contracting as a result of plans to close the Durham facility. It is settled that “when an employer’s operations are scheduled to terminate within 3 to 4 months that no useful purpose is

³ On the day of the hearing, March 25, 2003, the Employer informed employees at the Durham facility of Harris’ proposal.

served by directing an election.” Davey McKee Corp., 308 NLRB 839, 840 (1992). However, when an employer’s stated intentions to cease operations are speculative, the Board will direct an election. Canterbury of Puerto Rico, Inc., 225 NLRB 309, 309 (1976); Hazard Express, Inc., 324 NLRB 989, 990 (1997).

I conclude that the Employer’s assertion that the closing of the Durham facility is imminent does not withstand scrutiny. At the present time, the Employer’s plans are too indefinite to preclude the holding of an election. In that regard, I note that at the time of the hearing, Harris had not even presented her recommendation to close the Durham facility to the decision maker(s), nor had the Employer taken any definite steps toward closing the Durham facility. I further note that as recently as December 2002, Harris was considering whether Durham’s operations should be expanded. In addition, the record does not establish that approval of Harris’ recommendation is automatic. Although an earlier recommendation that she had made to close an office was approved, some of her past recommendations have not been followed, demonstrating that the approval of all or part of her recommendation is far from automatic. For example, in October 2002, Harris recommended two expansions, one in Florida and one in Texas, that were not approved.

In support of my finding above, I observe that cases in which the Board has declined to conduct an election based on an imminent cessation of operations have involved evidence of far more certainty than is present here. See for example, Larson Plywood Company, 223 NLRB 1161, 1161 (1976) (Board declined to conduct an election where the imminent closure of the plant was sufficiently certain—Board found that the Employer’s officers had been directed to liquidate the entire business within 90 days, a date certain); Davey McKee Corporation, 308 NLRB 839, 839-840 (1992) (Board declined to conduct an election where the evidence showed that within a month from the hearing the work at two projects would be completed and the employees would be terminated); Martin Marietta Aluminum, Inc., 214 NLRB 646, 646-647

(1974) (Board declined to conduct an election where closure of facility appeared definite and imminent; closure had been announced to employees and the public, the employer had stopped taking orders, the employer had terminated contracts with its suppliers and various utility companies, a substantial number of employees had already been terminated, and there were no prospects for the sale of the facility as an ongoing concern); Hughes Aircraft Company, 308 NLRB 82, 82 (1992) (Board declined to conduct an election where permanent layoff of employees and subcontracting of work was imminent and certain; the employer had executed letters of intent with subcontractors and employees had been notified that layoffs would take place on a date certain, within two months of the hearing).

To date, the only business factors with a certain impact on the Durham facility are those that have a nationwide impact, presumably affecting many of the Employer's operations. One is the loss of the Alltel contract as of October 2003; the other is the Employer's decision to shift all telephone sales accounts valued at less than \$100 a month to Dallas. The record is not entirely clear to what extent any decisions related to those factors have been implemented in the Durham facility. The Employer was not able to estimate the amount of telephone sales that have already been transferred to Dallas, or how long that process would take. Those two factors together account for a loss of approximately \$6 million in revenue from the Durham facility, leaving between \$12-14 million for the remaining telephone and premise accounts. The record does not disclose whether any telephone sales representatives or premise sales representatives would be terminated when those decisions were fully implemented.

As shown above, the record reflects that the closure of the Durham office is imminent only if Harris' proposal—including the transfer of telephone sales work of \$100 or more to the two Florida divisions and the transfer of premise work to Myrtle Beach—or some other proposal is approved. Thus far, Harris' recommendation has not yet been proposed, much less effectuated. Accordingly, I conclude that the evidence of an imminent closure or a contracting

unit is too speculative to preclude the direction of an election at this time. See Mental Health Services, 220 NLRB 96, 97 (1975) (Board rejected the Employer's assertions that it intended to subcontract the work at issue "before the end of the calendar year," finding that no date certain was named and that the contemplated change appeared speculative); Colonial Shirt Corporation, 114 NLRB 1214, 1216-1217 (1955) (Board rejected the Employer's assertion that it intended to make a substantial cut in its workforce within 90 days; the Board noted that the number of employees to be laid off and the time of the layoff had not been established, and that those decisions depended on the results of a cost analysis which had not been completed).

Based on the foregoing circumstances, I need not resolve whether the two positions that might remain—an account executive and a customer account agent—if Harris' recommendation is approved, would constitute an appropriate unit. As shown, such a contention is too speculative at the present time. Moreover, the record is insufficient to make a determination with respect to whether the account executive and the customer account agent would share a sufficient community of interest so as to constitute an appropriate unit.⁴

V. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

⁴ The record reflects that account executives are covered in some collective bargaining agreements between the Employer and the Petitioner, however, the record does not disclose the composition of those units. Also, account executives are not included in units at other locations. The record further discloses that account executives sell and process high-end accounts, whereas customer account agents handle delinquent accounts. Harris' proposal contemplates that both positions would work out of their homes.

3. The Union involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employee of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees in the classifications of telephone sales representative, premise sales representative, and customer account agent employed by the Employer at its Durham, North Carolina facility; excluding all office clerical employees, and guards, professional employees and supervisors as defined in the Act.

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the Communications Workers of America, District 3, AFL-CIO. The date time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to the Decision.

A. Voting Eligibility

Eligibility to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employee who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 12367 (1966); NLRB v. Wyman-Gordon Company, 395 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting processes, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 4035 University Parkway, Suite 200, P.O. Box 11467, Winston-Salem, North Carolina, 27116-1467, on or before **April 11, 2003**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever

proper objections are filed. The list may be submitted by facsimile transmission at (336) 631-5210. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **April 18, 2003**.

Dated at Winston-Salem, North Carolina, on the 4th day of April 2003.

/s/ Patricia L. Timmins

Patricia L. Timmins
Acting Regional Director
National Labor Relations Board
Region 11
4035 University Parkway, Suite 200

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P. O. Box 11467
Winston-Salem, North Carolina 27116-1467